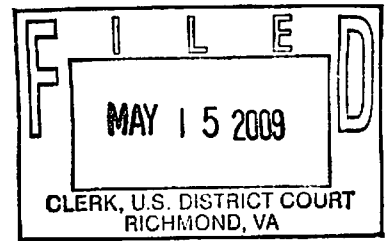


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION



PAMELA G. CAPPETTA,

Plaintiff,

v.

Action No. 3:08-CV-288

GC SERVICES LIMITED PARTNERSHIP,

Defendant.

ORDER

THIS MATTER is before the Court on Plaintiff's Renewed Motion for Leave to File Second Amended Complaint (Docket No. 127) and Defendant's unopposed Motion to Amend/Correct Answer (Docket No. 124), both filed May 1, 2009.

With regard to Plaintiff's Motion, the Court finds that Defendants' arguments in the Memorandum of Opposition lack merit. The Court's Order dated March 12, 2008 governed the singular issue of the proposed site inspection, not any other matter related to discovery as to the viability of a class allegation. The Court finds that Defendant's refusal to provide discovery comporting with Plaintiff's requests and this Court's orders, not Plaintiff's lack of effort, has caused the delay Defendant now raises in opposition to Plaintiff's renewed Motion. The Court has extended the discovery period several times as a result of Defendant's less than cooperative behavior. Defendant cannot now seek to benefit from that behavior by arguing discovery confirms a class allegation is not viable. Moreover, Defendant's argument that the cardholder agreement contains a binding arbitration clause

that applies to the instant parties ignores the plain language of that agreement. In sum, the Court cannot presently find any undue delay or bad faith on Plaintiff's part, futility as to the class allegation, or prejudice to Defendant. Therefore, the Court hereby GRANTS Plaintiff's Motion. Plaintiff is DIRECTED to file its proposed Second Amended Complaint forthwith.

With regard to Defendant's Motion, Plaintiff has stated that it does not oppose the amendment. Moreover, the Court finds no justification for denying it. Accordingly, the Court hereby GRANTS Defendant's Motion. Defendant is DIRECTED to file forthwith its proposed Amended Affirmative Defenses.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/  
**James R. Spencer**  
**Chief United States District Judge**

ENTERED this 15<sup>th</sup> day of May 2009